

Chapter 5

UTILITY PERMITS

GENERAL

State Statute 86.16(1) (See [Figure 1-9](#)) and State Statute 182.017(1) (See [Figure 1-10](#)) give utility companies the right to occupy highway right-of-way as long as they have the written consent of the entity that has jurisdiction over the highway. For the State and many other jurisdictions, this written consent usually takes the form of a permit. Statute 86.16(5) states that if a permit is denied or has not been acted upon **within 20 days** the utility company can appeal to the Division of Hearings and Appeals.

The State, county or local jurisdiction can make reasonable regulations to govern the utility occupation of the right-of-way. For State Trunk Highways, the utility must follow the Utility Accommodation Policy (UAP). Other jurisdictions have adopted the UAP or have created their own policy. For more specific guidance regarding the conditions under which utilities occupy State highway right-of-way consult the UAP.

RIGHT-OF-WAY EASEMENTS

When highway right-of-way is owned in fee it is very clear that the highway owner has permitting authority. It becomes less obvious when the right-of-way is held as an easement, with the underlying property owned by others.

Highway Easements

Prior to the 1950's WisDOT acquired highway right-of-way by easement only. For discussion purposes, this situation will be called "highway easement." Past court cases have proven that WisDOT has the ability to issue permits on highway easements.

The "police power" of governments allows this use without compensation to the underlying fee owner. State Statute 86.16(1) and State Statute 182.017(1) put the "police power" in statutory form as to highways and State Statute 182.018 as to railroads. These statutes do not require or mention ownership of the land. "Right of way" itself means only an easement, not a permanent interest.

A permit does not grant a property interest. So nothing is being taken away from the underlying property owner. This is one of the reasons we grant permits and not easements on our right-of-way.

The word highway is also broader than what we typically think; it is defined in State Statute 990.01(12) to include "all public ways and thoroughfares and all bridges upon the same." Again, ownership of the land is not mentioned.

Temporary and Permanent Limited Easements

In recent years, WisDOT has utilized Temporary Limited Easements (TLEs) and Permanent Limited Easements (PLEs). The names of these easements indicate that they are limited in nature. A TLE is only valid until the completion of the highway construction. WisDOT has no permitting authority in a TLE. A utility company needs an easement from the underlying property owner in order to occupy a TLE.

The ability to issue permits in PLEs is dependent upon the wording of the PLE. Some PLEs are very specific, such as "for sloping, restoration and maintenance" for example. If the use of the PLE is restricted to just a few activities, that type of easement would not give us permitting authority.

If the PLE has more general wording that says "for public transportation purposes," we can argue that a utility is a form of transportation of energy, products, data, etc. If it says for highway purposes, we'd have to argue "highway" includes normal co-located utilities -- a public way of sorts. With this type of broader language in the easement, WisDOT could issue utility permits.

DESIGNER REVIEW OF UTILITY PERMITS

Throughout the Design Process, utility companies submit requests for permits to install new facilities and adjust existing facilities within the highway right-of-way. Once a project has been put in the Six-Year Improvement Program, it is the responsibility of the Designer for that project to review all permit applications along the proposed project route. The Designer should determine whether the utility would interfere with any proposed roadway construction. The purpose of this review is to eliminate expensive relocation costs due to the highway project. It is more economical and efficient to revise utility plans prior to construction, than to relocate the conflicting facilities later.

The Designer is directed to Procedure 11-40-1 of the Facilities Development Manual that states: *"Above ground utility features such as poles, guy wires, pedestals, etc. shall be relocated outside the minimum clear zone. In addition, do not allow above ground utility features near ditch bottoms or on the ditch foreslope. Although departmental policy states that both above- and below-ground utility facilities are to be 'located at or as near as practical to the right-of-way line,' they should not be located directly on it because these facilities could interfere with the placement of right-of-way monuments."*

Note: Utility companies have a legal right to occupy highway right-of-way through a permit process."

The Utility Permit is received by the Utility Unit, which then forwards the permit, along with a comment sheet, to the Designer for review and comment. Other appropriate sections should also review the permit. When there are environmentally sensitive areas that are affected by the permit, it should be reviewed by the Region Environmental Coordinator. It is also recommended that the Region Erosion Control Specialist review permits that go through wetland areas or areas susceptible to erosion. On permits related to highway projects with right-of-way plats, the Real Estate Section should be informed of which parcels need to be acquired. This can be accomplished by routing the permit through the Real Estate Section or by sending them a note listing the parcels involved. The Region Utility Permit Coordinator reviews the permit to assure compliance with the Utility Accommodation Policy and other WisDOT requirements. After all of the appropriate people have reviewed and commented on the utility permit, the permit is approved by the Region Utility Permit Coordinator or sent back to the utility for revisions.

NOTE: A designer cannot sign a utility permit; they just review the permit for conflicts with the roadway design. The permit must be approved by the Region Utility Permit Coordinator.

WisDOT is not the permitting authority on connecting highways and County or local roads.

However, some jurisdictions do route a utility permit past WisDOT if they are aware of an upcoming project.

Unfortunately this is the exception and not the rule. If a designer is working on a connecting highway or local road, it is a good idea to encourage the permitting authority to send a copy of the new permits to the designer for review prior to approval. The designer should review the permits to be sure the work planned is compatible with the improvement project. This can save time and money during the construction process, and could eliminate a possible delay.

There are three general time frames during the life of an improvement project. These three time frames, and the permit review steps that need to be taken by the designer during each step, are discussed below.

EARLY IN PROJECT DEVELOPMENT

At this stage of the project design the Designer generally doesn't have a good feel for specific design details. When reviewing the permit, the Designer is limited to checking for obvious conflicts with the proposed construction.

The Utility Unit will photocopy the comment sheet and the cover of the permit. This copy will be kept in the Utility Unit file to help retrieve the actual permit from the Region files if needed at a later date.

The Designer should make copies of the proposed facility drawings, and keep these in mind during later stages of the design process. Also, the Designer must remember to ask for a new utility location survey in the areas where the facilities have been significantly altered.

The Designer must sign and date the comment sheet that is attached to the permit, and include any appropriate remarks. In some cases, the only remark may be: "Project design is too preliminary at this time to determine if there are any conflicts."

DURING PRELIMINARY DESIGN

At this stage of the project design, the Designer generally has rough cross sections with some proposed slope intercepts and a rough idea of new right-of-way required. The Designer should review the utility permit as closely as possible to determine if any potential conflicts are evident. The Designer's comments should be as specific as possible, yet kept on the conservative side, because changes may occur during final design.

The Designer should be especially conscious of the depth of underground facilities in grading areas. Storm sewers, culvert pipes, and other proposed drainage structures, should be noted, and potential problem areas should be spelled out in the Designer's remarks. If the proposed ditch cut is 2 feet at this time, the Designer might wish to say, "the cut will be 2 to 3 feet in this area." This will provide some flexibility during final design.

Frequently overlooked conflicts during preliminary design are in the Temporary Limited Easements needed for driveway alterations or slope adjustments. The work required in these easements can affect both underground and overhead utility facilities.

DURING FINAL DESIGN AND LATER

The review of utility permits during this stage of design is particularly crucial. By now, the Designer has a good idea of what will be built. Utility permits that are processed during this time frame are often closely tied to the project itself. These utility relocations are generally caused by the highway project. It is very important that any conflicts between the permit and the proposed roadway project are identified at this time. Failure to do so is costly to the utility, the DOT, and to the highway contractor. A lengthy delay can be disastrous to projects with a tight construction timeframe.

DRIVEWAYS

When reviewing a utility permit it is important to consider the locations of future driveways and field entrances. Utility pole and pedestal locations must be moved to avoid conflicts with proposed entrances. A driveway in a cut section will have different conflicts than the backslope areas adjacent to the driveway. Any buried utilities in the area will have to be placed deeper at the driveway location to accommodate for the future driveway profile. Driveways in fill sections can have a larger footprint than anticipated by the utility company, so it is important to check the location of the slope intercepts for the driveway fill.

EXPECTED TURNAROUND TIME

During early or preliminary design, the Designer should review a permit within 2 to 3 days of receiving it, and return his/her comments to the Utility Coordinator.

During final design, it is recognized that the permit review process is more time consuming since there are more design details to check for conflicts. The Designer should review the permit and return comments to the Utility Coordinator within 5 working days of receipt of the permit.

WHAT TO CHECK

The Designer should make a detailed review of utility company relocation plans. The review may include work both within the right-of-way and outside of the right-of-way.

Examples of items that should be evaluated for any work within the highway right-of-way or temporary easement areas are as follows:

1. Check the locations of proposed utility facilities against highway plan details to identify potential conflicts that need to be resolved. These details include slope intercept lines; fill heights, private driveways, culvert and sewer installations, structure construction, temporary roads and staged construction.
2. Determine if proposed above ground facilities are within the clear zone established for the project.
3. Determine if overhead facilities provide adequate aerial clearances in locations where cranes will be working.
4. Determine if above ground facilities are located in areas of intersection vision corners.
5. On freeways and other controlled access highways, determine whether all above ground facilities and access points to underground facilities are located outside controlled access lines or fences.
6. If the utility plan shows future expansion of their facilities, check the future locations against the highway plans.
7. For Trans. 220 projects, designers must adhere to the process of Trans. 220.05(7) if the owner's work plan/permit is not compatible or reasonable.
8. Determine if erosion control measures are adequate, especially in environmentally sensitive areas.

Conflicts between the highway and proposed utility relocation should be discussed with the utility. The designer should provide any needed assistance to the utility in their redesign.